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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,385	10/22/2003	Charles G. Hwang	102-539 CIP (P-6048/1)	8673
32752 7590 01/15/2009 David W. Hightet, VP & Chief IP Counsel Becton, Dickinson and Company (Hoffman & Baron) 1 Becton Drive, MC 110 Franklin Lakes, NJ 07417-1880				
EXAMINER WITCZAK, CATHERINE				
ART UNIT 3767		PAPER NUMBER		
MAIL DATE 01/15/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/691,385

**Applicant(s)**

HWANG ET AL.

**Examiner**

CATHERINE N. WITCZAK

**Art Unit**

3767

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) 3-7, 10, 13, 17-21, 25-27, 29 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 8, 9, 11, 12, 14-16, 22-24, 28, 31, 34, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, 8, 9, 11, 12, 14, 15, 16, 22, 23, 24, 28, and 31-34, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams (US 2,585,527).

Adams discloses in Figures 1, 2, and 8 a tip cap for a syringe (11) having a tip, the cap comprising a base (17), a body (13) having a textured top wall comprising a plurality of ribs (34) and an elliptical cross-section, and a shaft (12) having a helical thread shaped internally to match the syringe tip, wherein medicament within the syringe is accessible through the tip of the syringe with removal of the tip cap.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 8, 9, 11, 12, 14, 15, 16, 22, 23, 24, 28, 31-34, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al (US D457,954) as modified by Rowcamp (US 4,535,906).

Wallace et al disclose in Figure 1 a tip cap for a syringe having a tip, the cap comprising a base, a body having a textured top wall comprising a plurality of ribs, and a shaft having a helical thread shaped internally to match the syringe tip.

Wallace et al disclose the claimed invention except for the body having a non-circular cross-section. Rowekamp discloses in Figure 1 a cap having a body with a non-circular cross-section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Wallace et al with an elliptically shaped body as taught by Rowekamp, since such a modification would provide the device with an easier gripping shape providing better torque when opening/closing the cap.

#### ***Response to Arguments***

Applicant's arguments filed 12/11/2008 have been fully considered but they are not persuasive. Applicant argues that with any hypothetical combination of Rowekamp and Wallace et al the lower, not upper portion of Wallace et al would be modified by have the shape of the skirt (36) disclosed by Rowekamp. Examiner disagrees. The Rowekamp reference teach a cap having two sections: a section (37) which is used to attach the cap to the container, and a noncircular portion (36) which is gripped by the user when attaching the cap to the container. Wallace et al disclose a device also comprising two sections: a lower portion used to attach the cap to the syringe and an upper portion which the user would grasp when attaching the tip to the syringe. Thus, it is the Examiner's position that it would be obvious that when combining the teaching of Rowekamp to the device of Wallace et al, it would be obvious to one having ordinary skill in the art at the time the invention was made to modify the *upper* portion (not the lower portion as argued by Applicant) of Wallace et al with the *upper* noncircular portion of Rowekamp in order to provide the cap with an easier gripping shape which provide better torque when opening/closing the cap.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERINE N. WITCZAK whose telephone number is (571)272-7179. The examiner can normally be reached on Monday through Friday, 8-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Catherine N Witczak/

Examiner, Art Unit 3767

/Kevin C. Simons/

Supervisory Patent Examiner, Art Unit 3767